

This case has previously been before the Board three times. In decisions dated March 4, 2003, November 29, 2004 and June 13, 2006, the Board affirmed the Office's August 9 and November 20, 2001, May 24, 2004 and November 25, 2005 decisions which denied appellant's claim for a schedule award for his lower extremities on the grounds that he did not establish any permanent impairment causally related to his April 22, 1988 accepted employment-related

aggravation of osteoarthritis in his knees.¹ The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.² The facts and the history relevant to the present issue are hereafter set forth.

In letters dated June 19 to August 11, 2006, appellant's attorney requested that the Office correct the processing code for appellant's claim to reflect that the claim had been accepted for bilateral osteoarthritis of the knees. By letter dated August 17, 2006, the Office advised appellant's attorney that the accepted condition of appellant's claim had been amended to reflect aggravation of bilateral osteoarthritis of the knees.

By letter dated October 11, 2006, appellant, through his attorney, requested reconsideration before the Office regarding a schedule award for his lower extremities. In a September 25, 2006 medical report, Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon, provided a history of appellant's April 22, 1988 employment injury, medical treatment and employment background. He also reviewed appellant's medical records. On physical examination, Dr. Zamarin reported that appellant ambulated with a slow gait. The overall alignment of both knees was five degrees valgus bilaterally. Appellant had no joint effusion in either knee. Dr. Zamarin stated that range of motion of the left knee was 10 to 104 degrees with crepitus and the right knee was 10 to 56 degrees with crepitus. He further stated that appellant was tender over both medial and lateral joint lines, had a positive patellofemoral grind test and was neurovascularly intact distally. Dr. Zamarin utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*) to determine impairment of appellant's lower extremities. He stated that section 17.2h on page 544 of the A.M.A., *Guides* regarding arthritis and Table 17.2 on page 526 of the A.M.A., *Guides*, pertaining to the appropriate combination of evaluation methods permitted him to determine appellant's impairment based on his loss of range of motion. Dr. Zamarin noted that section 17.2h of the A.M.A., *Guides*, page 544 provides that individuals with knee flexion contractures should not be estimated using x-rays because measurements are unreliable. He then reported that appellant had flexion contractures of 10 degrees, bilaterally. Based on the A.M.A., *Guides* 537, Table 17-10, Dr. Zamarin determined that 10 to 104 degrees of decreased range of motion of the left knee fell within the mild category and constituted a 10 percent impairment. Regarding the right knee, he determined that 10 to 56 degrees of decreased range of motion constituted a moderate impairment which resulted in a 20 percent impairment based on the same table of the A.M.A., *Guides*.

In a decision dated November 21, 2006, the Office denied modification of its prior decisions denying a schedule award. It found the medical evidence of record insufficient to

¹ Docket No. 03-32 (issued March 4, 2003); Docket No. 04-1556 (issued November 29, 2004); Docket No. 06-395 (issued June 13, 2006).

² On May 31, 1991 appellant, then a 55-year-old letter carrier, filed an occupational disease claim, alleging that on April 22, 1988 he first realized that his osteoarthritis of the weight-bearing joints of his left and right knee was caused or aggravated by factors of his federal employment. By letter dated January 28, 1992, the Office accepted his claim for aggravation of osteoarthritis of both knees. On November 18, 1996 appellant filed a claim alleging that he sustained a recurrence of disability. By decision dated May 14, 1997, the Office denied his claim on the grounds that he failed to submit any medical evidence establishing that he sustained a recurrence of disability causally related to his accepted employment injury. On February 1 and 19, 1997 appellant filed claims for a schedule award.

establish that appellant sustained permanent impairment to his lower extremities causally related to the accepted aggravation of his preexisting bilateral osteoarthritis of the knees.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶

ANALYSIS

The Office accepted appellant's claim for aggravation of bilateral osteoarthritis of his knees. Appellant filed claims for a schedule award for permanent impairment of his lower extremities. The Board notes that, before application of the A.M.A., *Guides*, the Office must review appellant's entitlement to a schedule award by determining whether the impairment of the scheduled member is causally related to an accepted work injury.⁷ Appellant submitted Dr. Zamarin's September 25, 2006 medical report. Dr. Zamarin noted that appellant had flexion contractures of 10 degrees. He found that 10 to 104 degrees of decreased range of motion of the left knee was mild and constituted a 10 percent impairment (A.M.A., *Guides* 537, Table 17-10). Dr. Zamarin determined that 10 to 56 degrees of decreased range of motion of the right knee was moderate and resulted in a 20 percent impairment (A.M.A., *Guides* 537, Table 17-10). As noted, appellant bears the burden of proof to establish the essential elements of his claim.⁸ The Board finds that Dr. Zamarin properly utilized the A.M.A., *Guides* to determine permanent impairment of appellant's lower extremities. Although Dr. Zamarin determined that appellant had measurable impairment of the lower extremities based on the A.M.A., *Guides*, he did not address the cause of this impairment resulting from appellant's employment-related condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Zamarin did not attribute

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404 (1999).

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. § 10.404 (1999); *see also* *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *Tommy R. Martin*, 56 ECAB ____ (Docket No. 03-1491, issued January 21, 2005).

⁷ *See Veronica Williams*, 56 ECAB ____ (Docket No. 04-2120, issued February 23, 2005) (a schedule award can only be paid for a condition related to an employment injury).

⁸ *See Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Michael E. Smith*, 50 ECAB 313 (1999).

appellant's lower extremity impairment to his accepted work-related aggravation of bilateral osteoarthritis of the knees. The Board, therefore, finds that his September 25, 2006 report is insufficient to establish appellant's entitlement to a schedule award for his lower extremities.

The record is devoid of rationalized medical opinion evidence establishing that appellant sustained an injury to his lower extremities due to his April 22, 1988 employment injury. Without the necessary rationalized medical opinion evidence showing a causal relationship between appellant's accepted employment-related injury and resulting impairment, he has failed to establish his entitlement to a schedule award.

On appeal appellant's attorney contends that causal relationship was established based on a December 16, 1991 medical report of Dr. Marie Hatam, an Office referral physician, who stated that appellant sustained partial disability of both knees and that he would not return to his preinjury or pre-asymptomatic state.¹⁰ Counsel asserted that the Office was attempting to rescind acceptance of appellant's claim. The Office responded to counsel's request to correct appellant's file to reflect that his claim had been accepted for bilateral osteoarthritis of the knees. The Office has not rescinded its acceptance of appellant's claim and the Board finds that counsel's contention is without merit.

CONCLUSION

The Board finds that appellant has not established that he has permanent impairment of the lower extremities due to his accepted employment injury.

¹⁰ The Board notes that Dr. Hatam stated that appellant sustained work-related bilateral degenerative arthritis of the knees.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board